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ABSTRACT

Bylaws are a single document containing laws (rules) by which members of an organization have agreed to be governed. Bylaws are different from other basic laws governing deliberative societies, charters, constitutions, rules of order, and standing rules. Drafting bylaws is similar to the study of parliamentary law. It is usually a committee assignment. Bylaws are a legal document and must be precisely worded. Bylaws contain rules that pertain to the following: the official name of the organization; the object or purpose of the organization; requirements for membership; officers and designations; designations of meetings; establishment, composition, powers, and special rules pertaining to the board of directors and executive board; auxiliaries, departments, divisions and financial matters; parliamentary authority; and methods for amending bylaws. (A set of bylaws for a fictitious organization is provided as a guide in drafting bylaws. Standard print, in parentheses, explains what should be contained in the specific article or section. The bold print indicates the actual wording of the bylaws. Five references are included.) (NLA)

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BY LAWS: THE LAWS (RULES) FOR EVERYDAY ORGANIZATIONS

VIRGINIA COOPERATIVE EXTENSION SERVICE

Virginia Tech and Virginia State — Virginia's Land-grant Universities

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About the Center: The Center for Volunteer Development was established in 1980, with support from the W. K. Kellogg Foundation, to strengthen the voluntary sector in Virginia through educational programs and problem-solving assistance. Using the delivery system of the Cooperative Extension Service, the Center engages faculty at postsecondary institutions to provide assistance to voluntary organizations that request help with problems and programs. In addition, it helps faculty members to understand and teach students about the importance of volunteerism, and assists with the development and adoption of syllabi, modules, and courses in volunteer management and development. A brochure explaining these and other services of the Center for Volunteer Development is available from Extension offices or the Center.

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BYLAWS: THE LAWS (RULES) FOR EVERYDAY ORGANIZATIONS

by

Oscar M. Williams

INTRODUCTION

Bylaws are laws (rules) by which members of an organization have agreed to be governed. Short and simple, that's what they are. With exception to rules relating to how the organization's business is transacted, bylaws include all the rules of importance that cannot be changed except by previous notice to the membership.

The term bylaws (not hyphenated), as used by contemporary parliamentarians, refers to a single document which combines what was once two documents ("constitutions" and "bylaws"). Prior to the early 1980s, organizations generally placed what they considered to be their most important rules, i.e., rules that could not be suspended without a two-thirds or more vote of the membership, in their constitutions. Their less important rules and explanatory procedures were reserved for the organization's bylaws. Today, these rules are placed in a single document called bylaws. These rules cannot be suspended, even by unanimous vote. They can be amended or modified only in accordance with the rules/procedures provided within the bylaws themselves. **ALL ORGANIZATIONS THAT ARE OF A PERMANENT NATURE SHOULD HAVE A WRITTEN SET OF BYLAWS AND BE GOVERNED BY THEM.**

It is important to point out that bylaws are not the same as other basic laws governing deliberative societies. That is, bylaws are not Charters or Articles of Incorporation, Constitutions, Rules of Order or Standing Rules.

Bylaws are different from Charters. The term charter may refer to two types of instruments. In one sense, the term refers to a certificate granted by a higher body (usually a national or state-level organization) that allows or permits a subordinate unit the right to form and operate. Such a charter becomes the supreme instrument of authority under which a subordinate organization must operate. Neither the subordinate organization's constitution, bylaws, nor any other rules it may adopt may conflict with rules established by the parent body.

The term charter, in another sense, refers to what various states call Articles of Incorporation, Certificate of Incorporation, Article of Association or a Corporate Charter. Charters of this type, commonly called corporate charters, are legal instruments which states (and the federal government, as in the case of certain national organizations) require for recognition and certification of organizations. The information required to be placed in corporate charters is not exactly the same as that required to be placed in bylaws. For example, most states require that articles of incorporation designate a registered agent, a list of the incorporators and an article about dissolution, i.e., what would happen to the assets of the organization if the organization dissolved. None of this information must be included in bylaws. The requirements for being chartered differ so widely from state to state that it is always advisable to have a local attorney draft articles of incorporation and corporate charters.

Being chartered, or incorporated, entitles an organization to receive certain protections and benefits it otherwise would not have or receive. For example, a principal protection is that of limited personal liability to the organization's officers and members. A principal benefit is that an incorporated organization is legally entitled to buy, hold or sell property, hire employees and receive gifts. It is advisable that organizations wishing to engage in these activities be incorporated.

In organizations chartered by a state or by the federal government, the Corporate Charter supersedes all other rules the organization may adopt. All amendments or modifications of the corporate charter are subject to the vote of the membership, in accordance with the bylaws of the organization and the laws of the state or federal government that granted the charter. Therefore, it is advisable to place in charters only that information essential for the organization to be chartered.

Bylaws are not the same as Constitutions. The principle difference is that bylaws are easier to amend than constitutions. In many organizations, bylaws can be amended simply by previous notice to the membership and a subsequent majority vote. Almost always, more than a majority vote is required to amend constitutions.

In addition to the previous-notice requirement, some constitutions require as much as a three-fourths vote of the membership in order for an amendment(s) to be adopted. Bylaws drafted in recent years generally require a two-thirds vote for adoption of amendments. Therefore, unless the rules contained in an organization's constitution are more difficult to amend than the rules contained in its bylaws, no benefits are gained by having both. Indeed, having both almost always creates or causes confusion.

Bylaws are not Rules of Order. Bylaws pertain to the rules governing the overall affairs of the organization while rules of order pertain specifically to the manner in which business is transacted in meetings and the duties of officers and committees, especially if these duties are not prescribed in the bylaws. Because rules of order spring basically from the manner in which business is transacted, most ordinary organizations provide for the needed rules by prescribing that the current edition of a specific parliamentary authority, (Robert's Rules of Order Newly Revised or The Standard Code of Parliamentary Procedure) will govern the organization in cases not covered by the bylaws.

The average organization seldom finds it necessary to modify or amend the rules in its parliamentary authority. However, when they do, they adopt what are called special rules of order. These rules are supplements to the organization's parliamentary authority and supersede rules in the parliamentary authority if they conflict. Generally, rules of order pertain to special housekeeping matters such as the number and length of speeches, limits on honorariums, etc. They seldom are required for the average organizations that have adopted an up-to-date parliamentary authority.

Rules of order may be adopted or amended at any meeting after notice and a two-thirds vote--usually in the form of resolutions. When adopted, the words whereas, therefore, and resolved, are deleted.

Unless these rules of order are designed to protect absentees, the basic rights of an individual, or a minority of less than one-third of the members voting, they may be suspended by a two-thirds vote. However, rules regarding how rules of order may be suspended, cannot be suspended.

Bylaws are different from Standing Rules. Standing rules are those rules or resolutions that are of a continuing nature but actually pertain to matters of administration rather than matters of parliamentary procedure. They specify such things as the hour of regular meetings, the day of the week that regular meetings will be held, and/or the frequency or duration of an activity or event. Standing rules may be adopted without notice and passed with a majority vote, just as any main motion.

Standing rules, however, may not conflict with each other. For example, an organization may not have a standing rule which states, "No Club meetings will be held in November" and at the same time refer to a November meeting in a standing rule which states, "The November regular meeting shall be known as the 'family night' meeting of the Club." The club, however, may have a standing rule that states, "No regular business will be transacted at the November meeting of the Club" and also have a standing rule which states, "The November meeting of the Club shall be known as the 'family night' meeting of the Club."

No part of an organization's standing rules may be in conflict with its rules of order. No part of its rules of order may be in conflict with its bylaws. No part of its bylaws may be in conflict with its constitution. No part of an organization's constitution may be in conflict with its corporate charter, and no part of its own charter may be in conflict with the charter of the parent body. None of these may be in conflict with the laws of the municipality, state in which the organization was chartered, or with the laws of the nation.

DRAFTING OR REVISING BYLAWS

Drafting or revising bylaws can be challenging, especially for those who have not studied parliamentary law. Oftentimes parliamentarians must first help organizations to understand the essentials of parliamentary language and law. Then they must help groups understand that only one document--bylaws--is needed. (A parliamentarian, for the purposes of this paper, is one who has studied parliamentary law and holds membership in one of several state or national associations of parliamentarians.)

Drafting bylaws is usually a committee assignment. Sometimes, however, the assignment goes to an individual. Regardless, the burden is to make certain that the product is unambiguous, written tightly and with clarity. Individuals appointed to draft or revise bylaws should seek the professional help of a parliamentarian before embarking upon their task. The parliamentarian they select should be familiar with the parliamentary authority that will be used by the association.

Because bylaws are a legal document and must be precisely worded, punctuation and sentence structure are even more critical than readability. Each sentence or statement must be punctuated or crafted so well that even if lifted out of context, there can be no doubt as to its meaning.

Words should be chosen that have precise meanings. Titles of officers and names of committees are generally capitalized. Words such as should and shall are carefully chosen because they have different meanings. Should is advisory, shall is directive. If an organization's bylaws say, "the annual meeting *shall* be the fourth Saturday of January,' the organization has no choice but to conduct its annual meeting on the fourth Saturday in January. However, if the bylaws say, "the organization *should* have its annual meeting on the fourth Saturday in January," aside from the moral suasion implied from custom or expectations, the organization is under no obligation to hold its meeting on the fourth Saturday in January, or in January, or even during the spring!

Needless to say, bylaws should not contain statements that appear to contradict each other or appear to be in conflict. Times, places and frequency of board meetings should be distinguishable from meetings of the membership and committees. If committees are to be appointed by the board, the bylaws should not imply that the president is to appoint the committees. Duties assigned one committee should not also be designated as duties of another committee.

CONTENTS OF BYLAWS

Bylaws generally contain rules that pertain to the following:

1. the official name of the organization;
2. the object or purpose of the organization;

3. requirements for membership such as dues, fees, professional standing, etc.;

4. officers and designations relative to titles, duties, election and terms of office;

5. designations of regular, special and annual meetings;

6. establishment, composition, powers, and special rules pertaining to the Board of Directors and Executive Board;

7. establishment, composition, and duties of committees;

8. auxiliaries, departments, divisions and matters of finances such as fiscal year, budgets, general and special funds, investments and audits. (This is an optional article. Rules pertaining to these matters are often placed in standing rules of the organization.);

9. parliamentary authority that will be used by the organization; and

10. methods or procedures for amending the bylaws.

The above rules, once specifically worded and grouped under broad headings called articles, will be the basic guide for the organization. The following set of bylaws (for a fictitious organization) is provided as an example which may be used as a guide in drafting bylaws. The standard print explains what should be contained in the specific article or section. The bold print indicates the actual wording of the bylaws.

BYLAWS
OF THE BOLIGEE COMMUNITY CLUB
OF GREENE COUNTY, ALABAMA

ARTICLE I.
Name

(State the name of the club exactly as it should appear in legal documents. This ensures proper spelling and punctuation.)

The name of this Club shall be the Boligee Community Club of Greene County, Alabama.

ARTICLE II.
Object

(Specify the general objectives or purposes of the club.)

The object of this Club shall be to foster educational programs that will improve the membership in the arts, sciences and civic affairs of the community; to sponsor programs that will foster discussion and socialization among the citizens; to promote recreational activities that will benefit youth and senior citizens; and to engage in such other activities that will provide for the human and social betterment of the Boligee community.

ARTICLE III.
Membership

Section 1. (State the limitations, restrictions or other eligibility standards for membership. For example, indicate such things as residential requirements, age category, professional membership or certification, and such matters as the total number of members, the upper range of membership within classes, i.e., "The Club shall consist of no more than 300 members, with no more than 200 regular members and no more than 100 associate members.")

Membership in this Club, except for honorary membership, shall be limited to those citizens who were born in or reside in the town of Boligee. Any person who presents to the Secretary proof of birth or residence in the town of Boligee, and who upon payment of the initiation fee and the annual dues for the first year, shall be declared a member.

Section 2. (Define specific classifications of membership, if any. That is, if there are different classes of membership such as regular, student, active, associate, etc., specify each class and define the specific eligibility standards/requirements for admission to each class. Indicate special duties or responsibilities only if different from those specified in the organization's parliamentary authority.)

There shall be three classes of membership: regular, associate and honorary. Regular membership shall be reserved for those persons who currently live in the town of Boligee. Associate membership shall be reserved for those persons who at one time resided in Boligee.

Section 3. (Specify membership initiation fees, annual dues, time and method(s) of payment and process for collection.)

The initiation fee shall be thirty-five dollars. The annual dues shall be established each year at the annual meeting and shall be payable in advance on or before March 15 of each year. The Treasurer shall notify members who are three months in arrears. Those whose dues are not paid by the beginning of the fiscal year shall be automatically dropped from membership in the Club.

Section 4. (Indicate the process for termination of membership.)

Any member who desires to resign shall notify (in writing) the Secretary, who shall promptly remove the member's name from the Club's roll. No member resigning shall be entitled to refund of any dues.

Section 5. (Indicate any other relevant requirement for membership, inclusive of honorary membership.)

Upon written recommendation by three members, seconded by another member, and three-fourths vote by ballot at the annual meeting, honorary membership may be bestowed upon any individual who, in the opinion of the Club, has rendered noteworthy service to the Boligee Club or community. An honorary member shall have none of the obligations of membership in the Club, but shall be entitled to all of the privileges of the Club except those of making motions, of voting, and of holding office.

ARTICLE IV.
Officers

Section 1. (Specify each officer of the organization by the official title of the office. For example, specify titles such as chairman, president, vice-chairman, vice-president, first vice-president, second vice-president, secretary--recording or corresponding--treasurer, and the number of directors, if any. State that the officers shall perform the duties prescribed by the bylaws and specified in the parliamentary authority adopted by the club. Note: The bylaws need not spell out the duties of each officer unless they are different from the ones specified in the parliamentary authority adopted by the organization.)

The officers of this Club shall be a President, a Vice-President, a Secretary, a Treasurer, and three Directors. These officers shall perform the duties prescribed by the parliamentary authority adopted by the Club.

Section 2. (Specify the method of selecting officers. If a nominating committee is used, it should indicate when and how the committee is appointed, its duties, size, and when its report is due.)

At the regular meeting held on the third Wednesday in November, a Nominating Committee composed of five members shall be elected by the Club. It shall be the duty of this committee to nominate candidates for the offices to be filled at the annual meeting in January. The nominating Committee shall report at the regular meeting in December. Before the election at the annual meeting in January, additional nominations from the floor shall be permitted.

Section 3. (Indicate the term of office.)

The term of office for all officers shall be for one year or until their successors are elected. The term of office for all officers shall begin at the close of the annual meeting at which they are elected.

Section 4. (Specify any other specific rule(s) pertaining to duties, obligations, restrictions or expectations of officers.)

No officer shall live outside the Boligee community, hold more than one office at a time, or serve more than two consecutive terms in the same office.

ARTICLE V.
Meetings

Section 1. (Specify the date of the regular meetings. Note: Date refers to the day of the week, such as, "1st Monday," rather than the "15th of the month." It is advisable to specify that meetings will be held on the same day of the month, or week, if meetings are held weekly. If regular meetings will not be held during certain months/weeks, this should be specified in this section.)

The regular meetings of the Boligee Community Club shall be held on the third Wednesday of each month.

Section 2. (Specify the meeting date of the annual meeting.)

The regular meeting on the third Wednesday in January shall be the annual meeting of the Boligee Community Club and shall be for the purpose of electing officers, receiving reports of officers and for such business as may come before the Club.

Section 3. (Specify the process for having a special meeting or a called meeting. Note: The president is normally given greater authority to call special meetings than other officers. Note also, special meetings are called by a number of members that is slightly less than the quorum specified in Section 4 below.)

Special meetings of the Club may be called by the President or by the Board of Directors upon the written request of seven members. The purpose of the meeting shall be stated in the call. Except in the case of an emergency, all members shall be given five days' notice.

Section 4. (Specify the number of members that must be present to constitute a quorum. Note: A quorum is simply the number of members that must be present before the organization can legally transact business. If a quorum is not present, the organization may only do such things as open its meeting, call roll and establish the time for another meeting.)

Twelve members of the Club shall constitute a quorum.

ARTICLE VI.
The Board of Directors

Section 1. (Indicate how the board of directors is constituted. Although the term officers generally includes directors; for clarity, refer to them in this section also. For some organizations this article is entitled Board of Managers, Board of Governors or Executive Board. This is especially true if the bylaws of the organization provide for a subordinate body such as an Executive Committee.)

The officers of the Club, including the three Directors, shall constitute the Board of Directors.

Section 2. (Specify authority given the board of directors.)

The Board of Directors shall have general supervision of the affairs of the Club between the regular meetings of the Club, fix the time and place of the meetings, hear special appeals and make recommendations to the Club, and perform such other duties as may from time-to-time be specified by the Club.

Section 3. (Indicate the time for meetings of the Board.)

Regular meetings of the Board shall be held on the third Monday of each month. Special meetings of the Board may be called by the President and shall also be called upon the written request of three members of the Board.

ARTICLE VII.
Committees

(These sections specify committees of the club, the method(s) by which each committee is appointed, its duties, the time and the form of the committee's report, and to whom the committee is to report.)

Section 1. A Program Committee of five persons shall be appointed by the President promptly following each annual meeting. It shall be the duty of this committee to plan the annual program of the Club. The committee shall make its report at the regular meeting in April.

Section 2. A Membership Committee composed of five members shall be appointed by the President promptly following each annual meeting. It shall be the duty of this committee to design and implement the annual membership campaign. They shall examine all applications for membership, including applications for honorary membership, and make recommendations to the Board of Directors regarding their disposition.

Section 3. A Finance Committee composed of the Treasurer and three other members shall be appointed by the President promptly following each annual meeting. It shall be the duty of this committee to prepare the Club's budget (a zero-based, line-item budget) for the fiscal year beginning the first day of July, and to submit it to the Club at its regular meeting in August.

Section 4. An Auditing Committee consisting of three persons shall be appointed by the President at the June meeting, whose duties shall be to audit the Treasurer's accounts at the close of the fiscal year and to report at the regular meeting in August.

Section 5. (Allows for the creation of other committees.)

Such other committees, standing or ad hoc, shall be appointed by the President or Board of Directors as the Club shall from time-to-time deem necessary to carry on its affairs. The President shall be an ex officio member of all committees except the Nominating Committee.

ARTICLE VIII.
Finances

Section 1. (Designate the fiscal year, if it is different from the date of the annual meeting. It is advisable that the fiscal year and the annual meeting begin at the first of the year. However, for the sake of illustration, note that the fiscal year for this club is July 1 through June 30. Note also, Art. VII, Sec. 3, that the Finance Committee must have its budget prepared by the regular meeting in August. Delinquent members are dropped by the end of June., Art. III, Sec. 3.)

The fiscal year of the Club shall be from July 1 through June 30.

Section 2. (Specify the rules and specific instructions relative to the club's general funds, it special funds and its investments.)

The Club shall establish three funds: General Funds, Special Funds, and Investment. All money belonging to the Club shall be deposited in one of these funds. Each fund shall be established and maintained according to approved accounting practices.

Section 3. (Indicate special rules regarding the budget.)

The Club shall operate on a zero-based, line-item budget which shall be approved at the regular August meeting of the Club.

Section 4. (Indicate special rules regarding audits.)

The financial records of the Club shall be audited each year by the Auditing Committee and every five years by a certified accounting firm.

ARTICLE IX.
Parliamentary Authority

(State the parliamentary authority--the book of parliamentary rules--that will govern the club.)

The rules contained in the current edition of Robert's Rules of Order Newly Revised shall govern the Club in all cases to which they are applicable and in which they are not inconsistent with these bylaws and any special rules of order the Club may adopt.

ARTICLE X.
Amendment of Bylaws

(Specify rules for modifying the club's bylaws.)

The bylaws may be amended at any regular meeting of the Club by a two-thirds vote of the members present and voting, provided that the proposed amendment(s) has been submitted in writing at the previous regular meeting.

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